

THOMAS C. STERLING
BLAIR STERLING JOHNSON
MARTINEZ & LEON GUERRERO, P.C.
1008 Pacific News Building
238 Archbishop F.C. Flores Street
Hagåtña, Guam 96910
Telephone: (671) 477-7857
Facsimile: (671) 472-4290

THOMAS E. CLIFFORD
ATTORNEY AT LAW
2nd Floor Alexander Building, San Jose
P.O. Box 506514
Saipan, MP 96950
Telephone: (670) 235-8846/7
Facsimile: (670) 235-8848

Attorneys for Defendant Pro Marine Technology

**IN THE DISTRICT COURT FOR THE
THE NORTHERN MARIANA ISLANDS**

JOHN BRADY BARRINEAU,) CIVIL ACTION NO. 05-0028

Plaintiff,

VS.

PRO MARINE TECHNOLOGY and
CABRAS MARINE CORPORATION,

Defendants.

**REPLY OF PRO MARINE
TECHNOLOGY IN SUPPORT OF
MOTION FOR JUDGMENT ON THE
PLEADINGS OR PARTIAL SUMMARY
JUDGMENT**

CABRAS MARINE CORPORATION.

Cross-Claim Plaintiff,

VS.

PROMARINE TECHNOLOGY

Cross-Claim Defendant.

1 United States Supreme Court's decision in *McDermott, Inc. v.*
 2 *AmClyde*, 511 U.S. 202, 128 L.Ed.2d 148, 114 S.Ct. 1461 (1994).
 3 After the reviewing the cited authorities, Pro Marine agrees
 4 with this assertion and further submits that, based upon the
 5 *McDermott* case, the motion to dismiss the cross-claim must be
 6 granted and that the Court need not even address the issue of
 7 "good faith".

9 In *McDermott*, the Supreme Court examined various approaches
 10 which could be taken in joint tortfeasor settlement cases and
 11 determined that the proportionate liability approach rather than
 12 the *pro tanto* approach was the proper approach to be applied in
 13 admiralty cases. The Court noted that the *pro tanto* approach
 14 (which is the approach under CNMI law) should not be applied
 15 inasmuch as it was inconsistent with prior Supreme Court
 16 authority which found allocation based on proportionate fault
 17 appropriate in admiralty cases,¹ required ancillary litigation in
 18 connection with the "good faith" issue, and had the risk of
 19 saddling a non-settling defendant with a disproportionate share
 20 of liability. As such, the Supreme Court adopted the
 21 proportionate approach whereby a non-settling party is only
 22 liable for its fair share of the damages as determined by the
 23
 24
 25
 26

¹ *United States v. Reliable Transfer Co.*, 421 U.S. 397, 409, 95 S.Ct. 1708, 1714, L.Ed. 251 (1975).

jury regardless of the amount paid by the settling defendant.

In essence, under the proportionate approach, it is the plaintiff, in this case Mr. Barrineau, who bears the risk of settling with a defendant for less than that defendant's fair share. For example, if Mr. Barrineau recovers damages of \$500,000, at trial and Cabras is found to be 10% responsible, Mr. Barrineau will end up with a total recovery of \$150,000, consisting of the \$100,000 settlement paid by Pro Marine and \$50,000 to be paid by Cabras representing Cabras' 10% share of the total jury award. Thus, the payment to be made by Cabras after trial will be the same regardless of Pro Marine's settlement.

Cabras argues that dismissing the cross-claim will be "inequitable" since it may have to pay damages after trial despite the fact that Pro Marine acknowledges its own negligence and indicates no knowledge of any fault by Cabras in its discovery responses. If Cabras is ordered to pay damages, this will be because the jury disagrees with Pro Marine and finds facts sufficient to hold Cabras responsible to some degree for Mr. Barrineau's injury. Payment by Cabras of its fair share of the total damages is hardly inequitable.

By the same token, if the jury verdict indicates that Pro

1 Marine's \$100,000 payment was more than its fair share because
2 Cabras was primarily at fault, Pro Marine cannot obtain
3 contribution from Cabras for its overpayment. *Murphy v.*
4 *Florida Keys Elec. Co-Op Ass'n. Inc.*, 329 F.3d 1311, 1315 (11th
5 Cir. 2003).

6
7 Based upon the United States Supreme Court's decision in
8 *McDermott*, *supra*., Pro Marine respectfully submits that its
9 motion to dismiss the cross-claim must be granted as a matter of
10 law. Pursuant to the *McDermott* case, Cabras' liability is
11 limited to its fair share of the damages, if any, as determined
12 by the jury at trial. Cabras can never be required to pay Mr.
13 Barrineau more than its proportionate share of allocated
14 liability and, as such, no right to contribution, as alleged in
15 the cross-claim, can ever arise. Judgment on the pleadings or
16 partial summary

17 //

18 //

19 //

20

21

22

23

24

25

26

RLING JOHNSON
LEON GUERRERO
NAL CORPORATION
acific News Building
10 F.C. Flores Street
UAM 96910-5205

1 judgment is therefore appropriate as to Cabras' cross-claim
2 against Pro Marine.

3 **RESPECTFULLY SUBMITTED** this 14th day of December, 2006.
4

5 **THOMAS E. CLIFFORD, CNMI BAR NO. F0210**
6 ATTORNEY AT LAW

7 **BLAIR STERLING JOHNSON**
8 **MARTINEZ & LEON GUERRERO**
9 A PROFESSIONAL CORPORATION

10 BY: 

11 **THOMAS E. CLIFFORD, CNMI BAR NO. F0210**
12 *Attorneys for Cross-Defendant Pro Marine Technology*

13
14 E49:68\73061-01
15 G:\WORDDOC\PLD\TCS\305-REPLY BRIEF-MOTION TO DISMISS RE
16 BARRINEAU V PRO MARINE.DOC

17
18
19
20
21
22
23
24
25
26
BLAIR STERLING JOHNSON
LEON GUERRERO
MARTINEZ & LEON GUERRERO
PROFESSIONAL CORPORATION
100 F.C. Flores Street
P.O. Box 300
Tumon, Guam 96910-5205